

Commission's decision to extend the requirements of 76.606 to apply to all video programming providers, regardless of distribution technology.⁴² However, based on six years' experience since the captioning rules became effective, the pass-through requirement has not been sufficient to ensure that video programming distributors and providers take the steps necessary to prevent (and expeditiously remedy) technical problems that result in captions being removed from programming or otherwise becoming garbled and inaccessible to deaf and hard of hearing viewers.

In the 1997 *Report and Order*, the Commission reiterated that it is

unacceptable that existing captions might fail to be transmitted in a complete and intact manner to consumers. The reported problems – such as captions not being delivered intact, captions not synchronized with the video portion of the program, captions ending before the end of the programming, programming without captions even though the program indicates captioning or captions transmitted during one offering of the program but not another – deny accessibility to persons with hearing disabilities even when captioning seems to be available. . . . We believe that our enforcement of this new rule [Section 79.1(c) pass through requirement] and the enforcement of the requirements of Sections 15.119 and 73.682 in conjunction with the mandatory captioning requirements will ensure the technical quality for the closed captioning that is delivered to viewers' television receivers.⁴³

Unfortunately, based on the communications Petitioners continue to receive from deaf and hard of hearing individuals, such technical problems (including, but not limited to the same problems highlighted in the 1997 *Report and Order*) continue to occur, and technical quality has not been ensured or noticeably improved by virtue of the pass-through requirement in Section 79.1(c).⁴⁴

⁴² 47 C.F.R. § 79.1(c) (obligation to pass through captions of already captioned programs).

⁴³ *Report and Order*, 13 FCC Rcd at 3368-69, ¶ 211 (emphasis added).

⁴⁴ See Exhibit B5, July 20, 2000 e-mail complaint of Jan Boldt of Falls Church to the Northern Virginia Resource Center for Deaf and Hard of Hearing Persons concerning several problems with captioning that still commonly occur such as captioning cutting off prior to the end of programming and failure to synchronize captioning with what is shown visually.

Accordingly, the Commission must adopt additional mechanisms and procedures in order to prevent the occurrence of technical problems in the first instance, and to expeditiously remedy technical problems that may occur, in order to ensure that deaf and hard of hearing individuals are afforded “full accessibility” to video programming as required by Section 713 of the Communications Act.

Some of the types of technical problems that continue to occur with frequency, based on communications Petitioners continue to receive from deaf and hard of hearing individuals (and the personal experience of Petitioners’ principals), include the following:

1. Captions are turned off ten minutes before the end of national network programming.⁴⁵ (For example, captions disappear from national network programs that lead into local news broadcasts. For hearing persons, imagine watching a cliff-hanger and losing the audio ten minutes before the end of the show, every time. This is what happens to deaf and hard of hearing individuals when the captioning disappears.)
2. Captions disappear one hour into a two-hour movie.
3. Captions are absent although listed on TV programming schedules as having closed captions.⁴⁶ (On a related topic, in the case of pay-per-view channels, deaf and hard of hearing individuals have gone through the effort of selecting a pay-per-view program listed as having closed captions, and pay for the programming, only to discover that the program does not have captions.)
4. Captions are illegible, include white boxes, and overtypes.
5. Captions appear on a national program in one locality, but not another.⁴⁷

⁴⁵ See *FCC Report to Congress* at ¶ 89; n. 211 (“It is also reported that the closed captions are sometimes turned off five to eight minutes before the end of national network programming.”) Based on information provided by TDI’s constituents, this problem has not been satisfactorily resolved.

⁴⁶ See e.g., Exhibit B6, E-mail complaint of Gretchen Butkus to the Northern Virginia Resource Center for Deaf and Hard of Hearing Persons concerning programs listed in Florida Today newspaper as being captioned that are not captioned.

⁴⁷ In the 1997 Report and Order, the Commission used the example of Jeopardy! being captioned in Washington, D.C. and Nashville, Tennessee, but not in Atlanta, Georgia. See *FCC Report to Congress*, 11 FCC Rcd 19,214 at ¶ 90. More recently the season finale of Survivor:

6. Captions are missing from repeats of previously aired captioned programming or have scrambled and unreadable captions.⁴⁸

Even more disturbing is a recent trend among providers to include a disclaimer in its broadcast stating that the provider is not responsible for the correctness of captions.⁴⁹ While the Petitioners understand that some small errors will occur, particularly during live events, the programming provider should be held ultimately responsible for monitoring captioning and to take action if the captioning quality is substandard. Otherwise it will be easy for providers to sidestep captioning requirements by contracting with substandard captioning providers and disavowing the end product by saying that the quality of captioning is not in their control. If the text is full of errors it is not a caption, and should not be counted as such for purposes of meeting the law.

Given that captioning problems continue to occur and in some cases captioning quality has deteriorated since the adoption of the 1997 rules, it is clear that additional mechanisms or procedures are required to prevent the occurrence of such problems, in addition to the need for additional enforcement mechanisms (as outlined above) to remedy any technical problems that occur.

B. The Commission Should Require Continuous Monitoring of Captioning to Ensure that Technical Problems are Remedied Promptly and Efficiently

As discussed above, deaf and hard of hearing individuals continue to encounter numerous technical problems with captioning. While consumers may file complaints under the current rules,

Marquesas on May 17, 2002 was captioned in Baltimore but not in Vienna, Virginia. See Exhibit B7, Complaint of Lisa Tempesta to Cox Northern Virginia and related responses.

⁴⁸ See *FCC Report to Congress* at ¶ 90, n. 214. See also, Exhibit B8, E-mail complaint of Richard Johnson to the Northern Virginia Resource Center for Deaf and Hard of Hearing concerning the fact that captioning on Fox 5-Washington's 10 o'clock news captioning was garbled and/or incomprehensible on April 29-30, 2003 and May 5-8, 2003.

⁴⁹ For example, CBS Sports routinely broadcasts a disclaimer that it is not responsible for the accuracy of its captions during live sporting events.

as discussed above,⁵⁰ the process is onerous, lengthy, and rarely (if ever) results in the prompt and efficient resolution of a captioning technical problem. It is telling that the same types of technical problems continue to occur as those which occurred at the time the Commission submitted its Report to Congress on Video Programming Accessibility in 1996 (more than seven years ago),⁵¹ and when the Commission adopted the captioning rules in 1997.⁵²

Petitioners believe that many of these technical problems could be prevented in the first instance if the video programming distributor and providers had mechanisms in place to monitor captioning and routinely check their engineering equipment and procedures.⁵³ However, based on the communications that Petitioners have received from captioning consumers, many video programming providers and distributors apparently do not know about such problems until and unless a consumer actively complains about the problem. Presumably, such video programming providers and distributors are not monitoring the captioning equipment on a continuous basis to ensure technical quality, and to ensure compliance with the pass through requirement set forth in Section 79.1(c).⁵⁴

In the 1997 *Report and Order*, the Commission stated that it would

require video programming distributors to be responsible for any steps needed to monitor and maintain their equipment and signal transmissions to ensure that the captioning included with the video

⁵⁰ See *supra* part I(B)(2).

⁵¹ See *FCC Report to Congress*, 11 FCC Rcd 19214.

⁵² See *Report and Order*, 13 FCC Rcd 3272.

⁵³ During the Caption Quality Initiative Conference held in September 2002 in Fairfax, Virginia, consumers attending the conference identified the need for ongoing monitoring to ensure problem-free delivery as the most important issue relating to prerecorded captioning material that needs to be resolved. See Caption Quality Initiative Conference Report, September 14, 2002 available at: <http://tap.gallaudet.edu/CapQualReport.htm>.

⁵⁴ 47 C.F.R. § 79.1(c).

programming reaches consumers. Programming distributors will be responsible for any corrective measures necessary to ensure that the captioning is consistently included with the video programming delivered to viewers.⁵⁵

However, the Commission did not establish specific rules to operationalize these monitoring requirements. Petitioners respectfully submit that monitoring by both distributors and providers is of critical importance to minimize (and ultimately eliminate) the types of technical problems that continue to occur which prevent deaf and hard of hearing individuals from having access to captioned programs.⁵⁶ While the increased enforcement measures outlined above⁵⁷ are critical to implementation of the captioning rules, the need for filing complaints would be greatly minimized if video programming distributors and providers actively monitored and maintained their equipment in order to eliminate the occurrence of technical problems in the first instance, and to quickly and efficiently repair such problems that do occur (rather than waiting to receive a complaint to discover that such a problem is occurring).

In addition, without such continuous monitoring and equipment maintenance, many video programming distributors might be counting programming as captioned when in fact the programming was not captioned. In some cases, the distributor may not even know that it is violating the Section 79.1(c) pass-through requirements until and unless a captioning consumer complains. Rather than placing the burden on deaf and hard of hearing individuals to discover these

⁵⁵ 13 FCC Rcd at 3369, ¶ 212.

⁵⁶ As the Commission stated in its *Report to Congress*, “[t]he critical technical steps of a quality captioning service are accurate encoding, transmission reception and decoding of the signal. To avoid such errors, it is important that the captioned signal be monitored as it is fed, monitored during the duplication process and checked to ensure that the equipment used is not inadvertently stripping the captions, moving them onto the wrong line or placing them in the wrong field.” *FCC Report to Congress*, 11 FCC Rcd at ¶ 93.

⁵⁷ See *supra* part II.

types of problems, the distributor and providers should meet their obligations to monitor and maintain their equipment to minimize the occurrence of such technical problems that result in previously captioned programming being inaccessible to deaf and hard of hearing individuals.

The Commission should clarify and confirm that its captioning rules require video programming providers to have in place procedures to continuously monitor captioning equipment and processes to *avoid* technical problems in the first instance, and to quickly remedy any technical problems that may arise. In addition, as discussed below, the Commission also should clarify by rule that, to the extent such technical problems arise and cause any portion of the captioning to be garbled or missing, the program may not be counted toward meeting the applicable benchmark of required captioning hours. The Commission also should require that programs for which captioning was garbled or missing (during the entire program or any part thereof) be recorded/logged and included in a separate section of the video programming provider's captioning audit reports so that the Commission and captioning consumers may ensure that such programming is not included in the video programming provider's captioned hours.⁵⁸

C. The Commission Should Require Video Programming Distributors to Reformat Edited or Compressed Captioning

The Commission previously elected not to require video programming distributors to

⁵⁸ If there are problems with the audio portion of a program, the video programming provider apparently has far more incentive to ensure a rapid response to remedy the problem than in the context of captioning. (It is difficult to imagine a video programming provider allowing the audio portion of a program to simply be removed from the program, as occurs with captioning far too often, and in some cases for the same shows, week after week.) Again, it appears that market forces do not adequately address the need to ensure the consistent, reliable technical quality of captioning. Captioning consumers often feel isolated and extremely frustrated in their numerous and repeated attempts to have such captioning technical quality problems remedied.

reformat captioned programming that has been edited or compressed.⁵⁹ However, the Commission did not exempt edited programming; instead, under the current rules video programming distributors are only required to reformat the captions of a specific program if such captioning is necessary to reach the applicable benchmark.⁶⁰ In the *Order on Reconsideration*, the Commission reaffirmed its previous decision that a program received with captions that is edited is not required to have reformatted captions under § 79.1(c) (the “pass-through” rule).⁶¹ However, the Commission clarified that as the benchmarks increase, distributors will have to reformat the captions to comply with the rules. As the Commission noted, “We expect that new technologies will be developed to standardize reformatting procedures among captioning agencies making the process easier and less expensive. . . . We expect formatting to become standardized among captioning agencies which will in turn allow for easier, less expensive reformatting of edited programming.”⁶²

The Commission reasoned that by giving distributors until 2006 to gradually begin to reformat edited/compressed programming as required in order to meet the benchmark levels,

⁵⁹ *FCC Report and Order*, 13 FCC Rcd at 1312-1313, ¶ 86. *Order on Reconsideration* at 20009, ¶ 83. In its Report to Congress in 1996, the Commission explained the problems that result when previously captioned programming is edited or compressed but for which the captioning is not reformatted accordingly: “Closed captions may not remain with a program throughout the distribution chain, as would be expected. It is reported that, sometimes, a prime time program broadcast on network television may not have the captions when it is rerun in syndication or redistributed by a cable network. When a prime time program goes into syndication it may be edited to fit a shorter time frame. While the video and audio portions remain intact, the captioning may be removed. For example, some PBS programming originally broadcast with closed captions has been redistributed on cable by A&E without the captions included.” *Report to Congress*, 11 FCC Rcd at ¶ 90 (footnote references omitted). The lack of captioning for previously captioned programming due to editing/compressing remains a pervasive problem and results in consumer confusion, frustration, and disappointment when shows they know have been captioned no longer are.

⁶⁰ *Order on Reconsideration* at 20008, ¶ 80.

⁶¹ *Id.* at ¶ 82.

⁶² *Id.*

distributors would then have the procedures in place to undertake reformatting in all cases as of January 1, 2006.⁶³ Petitioners respectfully submit that, to the contrary, if distributors are not required to reformat edited or compressed programming until 100% captioning is required in 2006, they may be more likely to claim that they are not able to comply with the 100% captioning requirement on January 1, 2006.

Based on the numerous consumer complaints received by the Petitioners, it is not uncommon for rebroadcast or time compressed material to be labeled as captioned in programming guides even though no captions appear. It seems likely that providers may improperly count mislabeled reformatted programming towards making the benchmark numbers. Without a requirement that the providers track and report on their compliance with benchmarks, some providers may even be unaware that they are not in compliance.

In addition, since the *Order on Reconsideration* was issued, technology has progressed to the point that it is not problematic or cumbersome for providers to be required to caption edited or compressed programming. For example, software is available that extracts captioning data prior to video compression and then reinserts it after the video is decompressed.⁶⁴ Requiring reformatting of edited or compressed programming now will allow for a smoother transition to 100% captioning in 2006.

Moreover, Petitioners submit that the Commission should require distributors to reformat previously captioned programming that has been edited or compressed now (rather than waiting until 2006), in order to ensure that deaf and hard of hearing individuals have full access to video

⁶³ *Id.*

⁶⁴ For example, Computer Prompting and Captioning Co. (www.cpcweb.com) offers software programs that allow for the reformatting or time compressing of video material without losing captioning.

programming as required by Section 713 of the Communications Act. In the absence of such reformatting, the programming is not accessible to deaf and hard of hearing individuals.⁶⁵

D. The Commission Should Clarify that Incomplete Captioning Does Not Qualify as Captioned Hours

Under the Commission's current rules, to the extent technical problems occur which result in programs that were already captioned not being passed through with the original closed captioning intact, such failures to pass through already captioned programs constitutes a violation of Section 79.1(c) of the rules. The Commission should revise its captioning rules to clarify that if a video programming distributor fails to pass through original closed captioning intact as required by Section 79.1(c), whether in whole or in part, then the programming does not qualify as captioned for purposes of meeting the captioning benchmarks.

For example, if the captioning suddenly cuts off five or ten minutes before the end of the program, or an hour before the end of the program, or for any period of time during the programming, or if the captioning is garbled and otherwise illegible and/or incomplete, then the

⁶⁵ In addition, as a result of previously captioned programming being edited and/or compressed in cases where a distributor then removes the captioning rather than reformatting the captioning, programming and TV/cable listings may incorrectly list the programming as closed captioned ("cc") even though it no longer is. The Commission noted that

persons with hearing disabilities are concerned that programming often includes the "cc" closed captioning logo even when the version of the program being shown is not captioned. We expect video programming providers to take any steps necessary to ensure that the captioning logo is used only when the version of the programming being shown is captioned. We also expect that video programming providers in conjunction with those publicizing programming and publishing programming schedules will make every effort to correctly label programming as to whether it is captioned. *Order on Reconsideration* at ¶ 83.

There may be other reasons for programming incorrectly being listed as "cc" even when the programming is not closed captioned, but many instances of this problem likely could be avoided, and deaf and hard of hearing individuals would actually have access to the programming, if the Commission required distributors to reformat edited or compressed programming.

video program should not qualify as a captioned program. The Commission should establish procedures as part of the reporting requirements Petitioners propose herein by which video programming distributors must keep track of such occurrences of technical problems that result in already captioned programming not being passed through, whether in whole or in part.

A rule clarifying that garbled, incomplete and/or missing captions during the whole or any portion of a program will disqualify the entire program from counting towards the captioned benchmarks will give providers and distributors greater incentive to ensure that captioning is not interrupted in the first instance. The adoption of the 1997 captioning rules caused a proliferation of technically substandard captioning methods and agencies that provide captioning services at low costs but whose captioning product is garbled, incomplete and often times entirely unreadable. Creating a rule that clarifies that substandard captioning will not count towards compliance benchmarks will put video programming providers and distributors on notice that they are ultimately responsible for their captioning quality.

E. Live Programming that Uses the “Electronic Newsroom Technique” Should Not Count as Captioned Programming in Terms of Measuring Compliance with the Commission’s Rules

The Commission already forbids major national broadcast television network affiliates in the top 25 television markets as designated by Nielsen’s Designated Market Areas (“DMAs”) from counting live programming that is transmitted using the “electronic newsroom technique” as captioned programming in terms of measuring compliance with the Commission’s rules.⁶⁶ Petitioners believe that technology has developed to a degree that the use of the “electronic

⁶⁶ See 47 C.F.R. § 79.1(e)(3). National nonbroadcast networks that serve at least 50% of all homes subscribing to multichannel video programming services are also not permitted to count live programming transmitted with the “electronic newsroom technique” as captioned programming in relation to measuring compliance with the Commission’s rules.

newsroom technique” should be disfavored as it does not provide a quality captioned end product to consumers. Therefore, Petitioners ask that the Commission extend the prohibition of counting “electronic newsroom technique” programming towards meeting compliance standards to markets beyond the top 25 DMAs.

IV. The Commission Should Adopt Non-Technical Quality Standards to Ensure that Video Programming is “Fully Accessible” to Deaf and Hard of Hearing Individuals as Mandated by Section 713 of the Communications Act

Although five years have passed since the captioning rules became effective, the quality of captioning generally has not improved. The same types of captioning quality problems (both technical and non-technical) that occurred in 1995 when the Commission opened its NOI proceeding continue to occur.⁶⁷ When the Commission released its *Report and Order* and its *Order on Reconsideration*, the Commission declined to establish non-technical quality standards for captioning, but stated that it would continue to monitor quality issues and would consider establishing such standards if market incentives did not improve captioning quality.⁶⁸ However, the Commission recognized that “[i]nherent in a captioning obligation is the possibility of some

⁶⁷ See, e.g., *FCC Report to Congress* at ¶ 89-92 (describing numerous problems reported by captioning viewers regarding closed captioning quality.)

⁶⁸ In its *Notice of Proposed Rulemaking* (MM Docket 95-176, FCC 97-4, 12 FCC Rcd 1044 (1997)) the Commission tentatively concluded that it should not adopt standards for “non-technical” aspects of closed captioning, including accuracy of transcription, spelling, and placement and style at the beginning of the “phase in period” for closed captioning. Instead, the Commission proposed to “monitor the closed captioning that results from our requirements and, if necessary, revisit this issue at a later date.” In the *Report and Order*, the Commission concluded that “it would be best not to adopt standards relating to the non-technical quality of captioning and to allow market forces establish industry standards. As indicated above, **we intend to monitor the quality of the captions that are provided during the transition period.** Based on information we gather or receive from the public, we may revisit the need for standards for non-technical quality during the transition period. The review during the transition period will allow us to consider whether we have taken the appropriate actions necessary to further the important goal of accessibility of video programming as directed by Congress.” *Report and Order*, 13 FCC Rcd at 3387, ¶ 257 (emphasis added).

definition of a minimal level of quality necessary to demonstrate compliance with the requirement. Thus, we believe that it is well within the Commission's discretion to now adopt rules, standards, or guidelines that address these matters."⁶⁹

In deferring adoption of non-technical captioning quality standards, the Commission reasoned that video programming providers would establish quality standards and quality controls for the non-technical aspects of captioning through their arrangements with captioning suppliers or as part of the requirements of their programming contracts and licensing arrangements:

We expect that this approach will result in high quality captions comparable to the level of quality of other aspects of programming such as the audio and video. We will, however, consider revisiting this issue if, after some period of implementation of our transition rules, it becomes apparent that our assumptions regarding the marketplace incentives for quality captioning are incorrect.⁷⁰

While the Commission reasoned that market incentives could address non-technical quality without the need for quality standards, the Commission also emphasized that it would revisit the need for adopting non-technical quality standards during the phase-in period if warranted.⁷¹ The Commission also recognized that:

captions must provide information substantially equivalent to that of the audio portion of a video program in order to be useful and ensure accessibility to individuals with hearing disabilities. Captions also should not interfere with the viewability of the video portion of the program. However, we believe that there are good reasons to defer action on this issue in order to provide time for the captioning community to adjust and adapt to the new environment created by

⁶⁹ *Notice of Proposed Rulemaking*, 12 FCC Rcd at 1087, ¶ 104.

⁷⁰ *Report and Order* at 3374, ¶ 222.

⁷¹ *Id.* at 3374, ¶ 225 ("Our transition schedule is intended to allow us the flexibility to revisit issues, such as the quality of captioning, as it is implemented, if necessary.")

our rules. If, after a period of experience, it becomes apparent that quality levels are unsatisfactory, we can revisit this issue.⁷²

Now is the time for the Commission to establish quality standards in order to ensure that deaf and hard of hearing individuals have access to video programming in accordance with the mandates of Section 713. By establishing a rulemaking proceeding as requested by this Petition, the Commission will be able to gather information from interested consumers, captioning providers, and the affected video programming industry regarding how best to craft such standards.

Based upon complaints received by the Petitioners, there are widespread problems with non-technical captioning quality. While small and occasional captioning inaccuracies can be tolerated, programs often contain inaccuracies at a level that affect the comprehensibility of a program. It is clear that captions often are not checked for accuracy. For example, the following is a non-exhaustive list of captioning mistakes that occurred in a one-hour pre-produced program on the Discovery Channel entitled "Living with Tigers":

- "scam bellowed" instead of "scrambled"
- "kept tracks" instead of "skeptics"
- "rye no" instead of "rhino"
- "pedal to the medal" instead of "pedal to the metal"
- "posse cat" instead of "pussy cat"
- "what terry" instead of "watery"
- "surface" instead of "suffer"
- "offence" instead of "fence"
- "carin" instead of "carrion"
- "exceed them" instead of "see them"
- "repaired" instead of "prepared"
- "plans" instead of "plains"
- "foul" instead of "fowl"
- "adopt" instead of "adapt."⁷³

⁷² *Notice of Proposed Rulemaking*, 12 FCC Rcd at ¶ 111.

⁷³ See Exhibit B9, Complaint received from Terrie LaBarbera on October 7, 2003. Another complaint received from Ms. LaBarbera on August 25, 2003 concerning the Discovery

As a starting point, the Commission should revisit and request comment on the non-technical captioning quality standards previously proposed by commenters in the captioning proceedings in order to determine whether the same types of non-technical quality issues still need to be addressed.⁷⁴ In particular, the Commission should consider and examine the feasibility of adopting the following captioning quality standards identified in the *Notice of Proposed Rulemaking*: (a) require that captioned data and information contained in the soundtrack be delivered intact throughout the entire program; (b) require that captioning must transmit information about the audio portion of the program which is functionally equivalent to the information available through the program's soundtrack; (c) require that captions must include all elements of the soundtrack necessary for accessibility, including verbal information, identification of the speaker (if it is not apparent), sound effects, and audience reaction; (d) adopt standards for proper spelling, grammar, timing, accuracy, and placement; and (e) require captions to be provided in the style and standards that are appropriate for the particular type of programming that is being captioned, e.g., real-time captioning should be required for live programming (including local newscasts, as is

Channel's program entitled "Nefertiti Resurrected," included in Exhibit B9, listed the following mistakes:

- "hire gliks" instead of "hieroglyphs"
- "mmyfied" instead of "mummified"
- "blasfeme" instead of "blasphemy"
- "sack ri lj" instead of "sacrilege"
- "proeblg" instead of "probably"
- "kosmo" instead of "cosmos"
- "carnation" or "car mac" instead of "Karnak"
- "lane" instead of "lain"
- "rights" instead of "rites"
- "thrown" for "throne".

⁷⁴ See, e.g., *Notice of Proposed Rulemaking*, 12 FCC Rcd at 1088-1089, ¶106; *Report and Order* at n.705.

required for major news broadcasters pursuant to Rule 79.1) but should not be used in most cases for pre-produced programming.

In addition, the Commission should consider adopting the following captioning quality standards that were suggested by commenters in the previous captioning proceedings: (a) the placement of captions must reflect the source of audio information contained in the soundtrack; (b) captions must be synchronized with the audio content of the program, with some allowance made for programming that is live or recorded shortly before air time; (c) captioning should not interfere with other visually displayed information;⁷⁵ and (d) closed captioned master tapes used for duplication should be labeled as such (e.g., "cc") as they move through the distribution chain.⁷⁶ The time is ripe for the Commission to adopt non-technical captioning quality standards in order to ensure that video programming is fully accessible to deaf and hard of hearing individuals.

V. Adoption of the Measures Proposed in this Petition is in the Public Interest

As discussed above, Congress recognized that closed captioning is vital to deaf and hard of hearing individuals, both with respect to quality of life and safety issues, when it adopted Section 713 of the Communications Act. The Commission has enacted various rules designed to implement Section 713 and thereby increase the availability of closed captioning in video programming. These rules are a good start towards achieving that goal, but quality standards and enhanced enforcement measures with regard to captioning are needed in order to achieve the goals of full access to video programming.

⁷⁵ For example, the video display often shows a person's name and occupation, a telephone number to call, or other relevant information, that captions obscure or cover completely. This information may not be spoken and thus would not be in the captioning, making it inaccessible to the viewer.

⁷⁶ See *Report and Order* at n. 705 for a summary of the captioning quality standards proposed by commenters.

In creating its closed captioning rules, the Commission established certain benchmarks for captioning in video programming and relied upon the premise that market forces will assist in ensuring captioning quality and availability. Unfortunately, in the time since these rules were initially adopted, experience has proven that market forces alone are not enough to ensure that closed captioning achieves sufficient quality standards. As described above, captioning that does not meet an established quality threshold should not be counted in terms of satisfying the benchmark standards for captioning hours. By establishing quality standards, the Commission will ensure that captioned programming is accurate and useful to the viewer, and thereby will achieve the mandate of Section 713 that video programming be fully accessible to those with hearing difficulties.

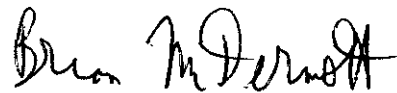
The Commission should also adopt enhanced enforcement measures to better implement the existing rules and benchmarks. As described above, because the current rules do not require compliance reporting, video providers and distributors may be unaware that they are out of compliance unless and until they receive a customer complaint. Enhanced enforcement mechanisms under the captioning rules will encourage video distributors and providers to self-audit and monitor their captioning to ensure compliance. By adopting the proposals advocated herein, the Commission will better implement the requirements of Section 713 and thereby increase the overall availability and quality of video programming captioning.

CONCLUSION

The time is overdue for the Commission to adopt rules as outlined herein to strengthen enforcement mechanisms and establish quality standards to better ensure implementation of the captioning rules in accordance with the mandates of Section 713 of the Communications Act. In particular, the Commission should revise its captioning rules to facilitate the complaint process and strengthen enforcement measures (including quarterly captioning compliance reporting,

Commission compliance audits, and the establishment of base forfeiture amounts for violations of the captioning rules); specify procedures for ensuring technical quality; and create standards for non-technical quality. Adoption of the proposals set forth herein will ensure that deaf and hard of hearing individuals who rely on closed captioning in order to have access to video programming will have the access that was intended by passage of Section 713 of the Communications Act. Based on the foregoing, Petitioners respectfully request that the Commission grant this Petition for Rulemaking.

Respectfully submitted,



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Dated: July 23, 2004

EXHIBIT LIST

Exhibit A	Sample Complaint Form
Exhibit B	Complaints
B1	<i>Gretchen Butkus (June 4, 2002)</i>
B2	<i>Joan Cassidy (January 1, 2003)</i>
B3	<i>Lisa Tempesta (May 20, 2002)</i>
B4	<i>Diane Edge (December 20-27, 2002)</i>
B5	<i>Jan Boldt (July 20, 2000)</i>
B6	<i>Gretchen Butkus (October 6, 2003)</i>
B7	<i>Lisa Tempesta (June 10, 2002)</i>
B8	<i>Richard Johnson (May 9, 2003)</i>
B9	<i>Terrie La Barbera (August 25 and October 7, 2003)</i>
Exhibit C	2003 Report to the National Captioning Institute Foundation